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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 RONALD L. BASKETT,

8 Petitioner,

9 v.

10 KENNETH QUINN,

11 Respondent.

Case No. C07-1020RSL

AMENDED ORDER GRANTING  
IN PART CERTIFICATE OF  
APPEALABILITY

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13 This matter comes before the Court on a limited remand from the United States  
14 Court of Appeals for the Ninth Circuit for clarification of the certificate of appealability issued  
15 in this matter on May 21, 2008. The Court declines petitioner's invitation to reconsider or  
16 expand the certificate of appealability and accepts respondent's concession that petitioner  
17 remains "in custody" despite his release from confinement. Having reviewed the memoranda  
18 and exhibits submitted by the parties, the Court amends its May 21, 2008, to order as follows:

19 Because petitioner filed his notice of appeal after April 24, 1996, his appeal is  
20 governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which  
21 worked substantial changes to the law of habeas corpus. Under the amended version of 28  
22 U.S.C. § 2253(c), a petitioner may not appeal the denial of a habeas corpus petition unless the  
23 district court or the Ninth Circuit issues a certificate of appealability identifying the particular  
24 issues that may be pursued on appeal. United States v. Asrar, 116 F.3d 1268 (9th Cir. 1997).

25 To obtain a certificate of appealability, the petitioner must make a substantial  
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1 showing of the denial of a constitutional right. “Obviously the petitioner need not show that he  
2 should prevail on the merits. He has already failed in that endeavor.” Barefoot v. Estelle, 463  
3 U.S. 880, 893 n.4 (1983). Rather, he must demonstrate that the resolution of the habeas petition  
4 is debatable among reasonable jurists or that the issues presented were “adequate to deserve  
5 encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Where a  
6 petition is dismissed on procedural grounds, the Court must determine whether “jurists of  
7 reason” would debate (1) whether the petition states a valid claim of the denial of a  
8 constitutional right and (2) whether the district court’s procedural ruling was correct. Slack, 529  
9 U.S. at 484.

10           Having reviewed the record in this case, including the Report and  
11 Recommendation of the Honorable Mary Alice Theiler, United States Magistrate Judge, the  
12 Court finds that the dismissal of petitioner’s claims as not properly exhausted in the state courts  
13 and therefore procedurally defaulted is debatable among reasonable jurists and that those claims  
14 deserve to proceed further. Petitioner’s 1st, 3rd, 4th, 6th, 7th, and 9th claims for relief are,  
15 therefore, appealable under AEDPA. The Court’s findings regarding petitioner’s other grounds  
16 for review, namely his hearsay objection, the Americans with Disability Act claim, and the  
17 constitutionality of a state statute, are not debatable and should not be the subject of an appeal.  
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19           For all of the foregoing reasons, petitioner’s request for a certificate of  
20 appealability is GRANTED in part and DENIED in part.  
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22           Dated this 18th day of March, 2009.

23           Robert S. Lasnik

24           Robert S. Lasnik

25           United States District Judge  
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